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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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12 **UNITED STATES OF AMERICA,**) No. 2:12-CR-00004-027-APG-GWF
13 Plaintiff-Appellee,)
14 vs.) (1) CORRECTED, UNOPPOSED MOTION
15 **FREDERICK THOMAS,**) TO UNSEAL AND PROVIDE COPIES OF
16 Defendant-Appellant.) BAIL REPORT(S) FOR USE IN PENDING
17) APPEAL;
18) AND
19) (2) [PROPOSED] ORDER RE SAME
20)
21)
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28)

I, Mark D. Eibert, declare as follows:

1. I am the appointed counsel of record under the Criminal Justice Act for Mr. Frederick Thomas in the direct Ninth Circuit appeal (No. 15-10000) of the Judgment and sentence in the above case.

2. I expect to file a motion for release pending appeal in the Ninth Circuit.

3. In order to fully inform the Ninth Circuit of many of the relevant facts, I need to submit to the Ninth Circuit the bail report(s) that were submitted to this Court on or about March 21, 2012. At that time, Pretrial Services Officer Jaime Stroup wrote a bail report addressed to the Honorable Magistrate Judge Carl W. Hoffman, attaching a bail report from the Middle District of Florida. Pretrial Services recommended releasing Mr. Thomas on his own

recognition, and the Court did so. Mr. Thomas remained free on his own recognizance for years, even after sentencing, and timely self-surrendered to serve his prison sentence. However, on March 18, 2015, this Court denied a motion by prior counsel for bond pending appeal. Docket # 948. Undersigned counsel wishes to ask the Ninth Circuit to make its own determination on this issue as permitted under Federal Rule of Appellate Procedure 9(b) and (c) and Ninth Circuit Rule 9-1.2.

4. With the permission of Pretrial Services Officer Erin Oliver, undersigned counsel reviewed the bail report(s) at his local Pretrial Services Office. Ms. Oliver indicated, however, that in order to provide me with a copy to present to the Ninth Circuit along with my motion for release pending appeal, I would need an Order from this Court.

5. Counsel intends to use this bail report solely for purposes of a motion for release pending appeal in the Ninth Circuit, and to file it under seal in the Ninth Circuit.

6. Opposing counsel, AUSA Elizabeth Olson White, Esq., has graciously stated that she does not oppose this motion.

7. A proposed Order containing the restrictions set forth above is below this motion.

8. For the foregoing reasons, undersigned counsel respectfully requests that this Court enter the proposed order attached below unsealing these documents and providing copies to counsel for both parties for use in a motion directed to the Ninth Circuit for release pending appeal only.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed at Half Moon Bay, California on October 21, 2015.

Respectfully submitted,

/s/ *Mark D. Eibert*

Mark D. Eibert
Attorney for Defendant-Appellant
FREDERICK THOMAS

1 **ORDER**

2 IT IS SO ORDERED:

3 1. The bail report submitted to the Court on or about March 21, 2012 in this case,
4 including the bail report from the Middle District of Florida which was attached thereto, shall be
5 unsealed and Pretrial Services shall provide copies to counsel for both parties only.

6 2. Dissemination of the documents described above shall be limited to counsel for the
7 parties in this case and their staffs and the defendant and solely for the purpose of litigating any
8 motion for release pending appeal in the Ninth Circuit in Appeal No. 15-10000. Dissemination
9 to anyone else for any other purpose is prohibited.

10 3. Should counsel for either party wish to file any or all of the above documents in the
11 Ninth Circuit, they shall be filed under seal with the permission of that Court.

12 IT IS SO ORDERED.

13 Dated: October 22, 2015


GEORGE FOLEY, JR.
United States Magistrate Judge

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that he served a copy of this document on Plaintiff's
3 counsel, via electronic service through the PACER system on October 21, 2015.

4 */s/ Mark D. Eibert*

5 Mark D. Eibert
6 Attorney for Defendant-Appellant
7 Frederick Thomas

8 **PROOF OF SERVICE BY MAIL**

9 The undersigned hereby certifies that his business mailing address is P. O. Box 1126,
10 Half Moon Bay, CA 94019, that he is not a party to this action, that he is a citizen of the United
11 States of such age and discretion to be competent to serve papers, and that on the below date he
12 caused copies of

13 UNOPPOSED MOTION TO UNSEAL AND [PROPOSED] ORDER RE SAME

14 To be served by both U.S. Mail, postage pre-paid, and e-mail, to:

15 Elizabeth Olson White, Esquire
16 Assistant U.S. Attorney
17 OFFICE OF THE U.S. ATTORNEY
18 Suite 600
19 100 West Liberty Street
20 Reno, NV 89501
21 E-mail: Elizabeth.O.White@usdoj.gov

22
23 I declare under penalty of perjury that the foregoing is true and correct. Executed on
24 October 21, 2015 at Half Moon Bay, California.

25 */s/ Mark D. Eibert*

26 Mark D. Eibert
27 Attorney for Defendant-Appellant